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AMENDED IN SENATE MAY 8, 2013

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AMENDED IN SENATE MARCH 12, 2013

SENATE BILL

No. 141

Introduced by Senator Correa

(Principal coauthor: Senator Leno)

**(Coauthors: Senators Cannella, *Evans*, Hernandez, Lara, and
Steinberg)**

(Coauthors: Assembly Members Ammiano, Garcia, and Wieckowski)

January 29, 2013

An act to amend Sections 76140 and 89705 of the Education Code,
relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 141, as amended, Correa. Postsecondary education benefits:
children of deported or voluntarily departed parents.

(1) Existing law establishes the California Community Colleges,
under the administration of the Board of Governors of the California
Community Colleges, the California State University, under the
administration of the Trustees of the California State University, and
the University of California, under the administration of the Regents
of the University of California, as the 3 segments of public higher
education in the state. Existing law exempts specified students from
paying nonresident tuition at the California Community Colleges and
the California State University.

This bill would additionally exempt a student who is a United States citizen who resides in a foreign country, and who meets all of the following requirements, from nonresident tuition at the California Community Colleges and the California State University: (A) demonstrates financial need for the exemption; (B) has a parent who has been deported or was permitted to depart voluntarily; (C) moved abroad as a result of that deportation or voluntary departure; (D) lived in California immediately before moving abroad; (E) attended a *public or private* secondary school in the state for 3 or more years; and (F) *is upon enrollment, will be* in his or her first academic year as a matriculated student in California public higher education, as defined, *will be living in California, and will file an affidavit with the institution stating that he or she intends to establish residency in California as soon as possible.* The bill would request the regents to enact regulations and procedures to exempt similarly situated students of the University of California from nonresident tuition.

(2) To the extent the provisions of this bill would place additional requirements on community college districts regarding the provision of postsecondary education benefits to additional categories of students, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is estimated that over 5 million children are currently living
- 4 in the United States with at least one undocumented immigrant
- 5 parent. Approximately 75 percent of these children are United
- 6 States citizens, and many of them are from California.
- 7 (b) When one or both parents are deported, these citizen children
- 8 often have no recourse but to leave the country. At no fault of their

own, these children lose their schools, friends, and the place they have come to know as “home.”

(c) As a result of moving abroad, there is a break in these children’s presence in California, affecting their ability in later years to attend a California public college or university at the much lower resident prices.

(d) Today, these children, who are American citizens, are growing up outside the United States, yet their desire to return to their birth home continues to live within them. These children lack many basic services granted to most United States citizens.

(e) The State of California has an interest in ensuring that these children can access and afford a high-quality education.

SEC. 2. Section 76140 of the Education Code, as added by Section 66 of Chapter 38 of the Statutes of 2012, is amended to read:

76140. (a) A community college district may admit, and shall charge a tuition fee to, nonresident students, except that a community college district may exempt from all or parts of the fee any person described in paragraph (1), (2), or (3), and shall exempt from all of the fee any person described in paragraph (4):

(1) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this paragraph shall not be made on an individual basis.

(2) Any nonresident who is both a citizen and resident of a foreign country, if the nonresident has demonstrated a financial need for the exemption. Not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this paragraph may be made on an individual basis.

(3) (A) A student who, as of August 29, 2005, was enrolled, or admitted with an intention to enroll, in the fall term of the 2005–06 academic year in a regionally accredited institution of higher education in Alabama, Louisiana, or Mississippi, and who could not continue his or her attendance at that institution as a direct consequence of damage sustained by that institution as a result of Hurricane Katrina.

(B) The chancellor shall develop guidelines for the implementation of this paragraph. These guidelines shall include standards for appropriate documentation of student eligibility to the extent feasible.

1 (C) This paragraph shall apply only to the 2005–06 academic
2 year.

3 (4) A nonresident student who is a United States citizen who
4 resides in a foreign country, if that nonresident meets all of the
5 following requirements:

6 (A) Demonstrates a financial need for the exemption.

7 (B) Has a parent or guardian who has been deported or was
8 permitted to depart voluntarily under the federal Immigration and
9 Nationality Act in accordance with Section 1229c of Title 8 of the
10 United States Code. The student shall provide documents from the
11 United States Citizenship and Immigration Services evidencing
12 the deportation or voluntary departure of his or her parent or
13 guardian.

14 (C) Moved abroad as a result of the deportation or voluntary
15 departure specified in subparagraph (B).

16 (D) Lived in California immediately before moving abroad. The
17 student shall provide information and evidence that demonstrates
18 the student previously lived in California.

19 (E) Attended a *public or private* secondary school, *as described*
20 *in Sections 52 and 53*, in the state for three or more years.

21 (F) ~~Is~~ *Upon enrollment, will be* in his or her first academic year
22 as a matriculated student in California public higher education, as
23 that term is defined in subdivision (a) of Section 66010, *will be*
24 *living in California, and will file an affidavit with the institution*
25 *stating that he or she intends to establish residency in California*
26 *as soon as possible.*

27 (b) A district may contract with a state, a county contiguous to
28 California, the federal government, or a foreign country, or an
29 agency thereof, for payment of all or a part of a nonresident
30 student's tuition fee.

31 (c) Nonresident students shall not be reported as full-time
32 equivalent students (FTES) for state apportionment purposes,
33 except as provided by subdivision (j) or another statute, in which
34 case a nonresident tuition fee may not be charged.

35 (d) The nonresident tuition fee shall be set by the governing
36 board of each community college district not later than February
37 1 of each year for the succeeding fiscal year. The governing board
38 of each community college district shall provide nonresident
39 students with notice of nonresident tuition fee changes during the
40 spring term before the fall term in which the change will take

1 effect. Nonresident tuition fee increases shall be gradual, moderate,
2 and predictable. The fee may be paid in installments, as determined
3 by the governing board of the district.

4 (e) (1) The fee established by the governing board pursuant to
5 subdivision (d) shall represent for nonresident students enrolled
6 in 30 semester units or 45 quarter units of credit per fiscal year
7 one or more of the following:

8 (A) The amount that was expended by the district for the
9 expense of education as defined by the California Community
10 College Budget and Accounting Manual in the preceding fiscal
11 year increased by the projected percent increase in the United
12 States Consumer Price Index as determined by the Department of
13 Finance for the current fiscal year and succeeding fiscal year and
14 divided by the FTES (including nonresident students) attending
15 in the district in the preceding fiscal year. However, if for the
16 district's preceding fiscal year FTES of all students attending in
17 the district in noncredit courses is equal to, or greater than, 10
18 percent of the district's total FTES attending in the district, the
19 district may substitute the data for expense of education in grades
20 13 and 14 and FTES in grades 13 and 14 attending in the district.

21 (B) The expense of education in the preceding fiscal year of all
22 districts increased by the projected percent increase in the United
23 States Consumer Price Index as determined by the Department of
24 Finance for the fiscal year and succeeding fiscal year and divided
25 by the FTES (including nonresident students) attending all districts
26 during the preceding fiscal year. However, if the amount calculated
27 under this paragraph for the succeeding fiscal year is less than the
28 amount established for the current fiscal year or for any of the past
29 four fiscal years, the district may set the nonresident tuition fee at
30 the greater of the current or any of the past four-year amounts.

31 (C) An amount not to exceed the fee established by the
32 governing board of any contiguous district.

33 (D) An amount not to exceed the amount that was expended by
34 the district for the expense of education, but in no case less than
35 the statewide average as set forth in subparagraph (B).

36 (E) An amount no greater than the average of the nonresident
37 tuition fees of public community colleges of no less than 12 states
38 that are comparable to California in cost of living. The
39 determination of comparable states shall be based on a composite

1 cost-of-living index as determined by the United States Department
2 of Labor or a cooperating government agency.

3 (2) The additional revenue generated by the increased
4 nonresident tuition permitted under the amendments made to this
5 subdivision during the 2009–10 Regular Session shall be used to
6 expand and enhance services to resident students. In no event shall
7 the admission of nonresident students come at the expense of
8 resident enrollment.

9 (f) The governing board of each community college district also
10 shall adopt a tuition fee per unit of credit for nonresident students
11 enrolled in more or less than 15 units of credit per term by dividing
12 the fee determined in subdivision (e) by 30 for colleges operating
13 on the semester system and 45 for colleges operating on the quarter
14 system and rounding to the nearest whole dollar. The same rate
15 shall be uniformly charged nonresident students attending any
16 terms or sessions maintained by the community college. The rate
17 charged shall be the rate established for the fiscal year in which
18 the term or session ends.

19 (g) Any loss in district revenue generated by the nonresident
20 tuition fee shall not be offset by additional state funding.

21 (h) Any district that has fewer than 1,500 FTES and whose
22 boundary is within 10 miles of another state that has a reciprocity
23 agreement with California governing student attendance and fees
24 may exempt students from that state from the mandatory fee
25 requirement described in subdivision (a) for nonresident students.

26 (i) Any district that has more than 1,500, but less than 3,001,
27 FTES and whose boundary is within 10 miles of another state that
28 has a reciprocity agreement with California governing student
29 attendance and fees may, in any one fiscal year, exempt up to 100
30 FTES from that state from the mandatory fee requirement described
31 in subdivision (a) for nonresident students.

32 (j) The attendance of nonresident students who are exempted
33 pursuant to subdivision (h) or (i), or pursuant to paragraph (3) or
34 (4) of subdivision (a), from the mandatory fee requirement
35 described in subdivision (a) for nonresident students may be
36 reported as resident FTES for state apportionment purposes. Any
37 nonresident student reported as resident FTES for state
38 apportionment purposes pursuant to subdivision (h) or (i) shall
39 pay a per unit fee that is three times the amount of the fee
40 established for residents pursuant to Section 76300. That fee is to

1 be included in the FTES adjustments described in Section 76330
2 76300 for purposes of computing apportionments.

3 ~~(k) This section shall become operative on July 1, 2013.~~

4 SEC. 3. Section 89705 of the Education Code is amended to
5 read:

6 89705. (a) Except as provided in subdivision (c), and as
7 otherwise specially provided, an admission fee and rate of tuition
8 fixed by the trustees shall be required of each nonresident student.
9 The rate of tuition to be paid by each nonresident student, as
10 defined in Section 68018, shall not be less than three hundred sixty
11 dollars (\$360) per year. The rate of tuition paid by each nonresident
12 student who is a citizen and resident of a foreign country and not
13 a citizen of the United States, except as otherwise specifically
14 provided, shall be fixed by the trustees and shall not be less than
15 three hundred sixty dollars (\$360) per year.

16 (b) The trustees may waive entirely, or reduce below the rate,
17 or the minimum rate, fixed by this section, the tuition fee of a
18 nonresident student who is a citizen and resident of a foreign
19 country and not a citizen of the United States and who attends a
20 state university or college under an agreement entered into by a
21 governmental agency or a nonprofit corporation or organization
22 with a similar agency, or corporation or association, domiciled in
23 and organized under laws of a foreign country, where a principal
24 purpose of the agreement is to encourage the exchange of students
25 with the view of enhancing international good will and
26 understanding. The trustees shall, in each instance, determine
27 whether the conditions for this exemption from fees exist and may
28 prescribe appropriate procedures to be complied with in obtaining
29 the exemption.

30 (c) The trustees shall waive entirely the admission fee and rate
31 of tuition fixed under this section for a nonresident student who
32 is a United States citizen who resides in a foreign country, if that
33 nonresident meets all of the following requirements:

34 (1) Demonstrates a financial need for the exemption.

35 (2) Has a parent or guardian who has been deported or was
36 permitted to depart voluntarily under the federal Immigration and
37 Nationality Act in accordance with Section 1229c of Title 8 of the
38 United States Code. The student shall provide documents from the
39 United States Citizenship and Immigration Services evidencing

1 the deportation or voluntary departure of his or her parent or
2 guardian.

3 (3) Moved abroad as a result of the deportation or voluntary
4 departure specified in paragraph (2).

5 (4) Lived in California immediately before moving abroad. The
6 student shall provide information and evidence that demonstrates
7 the student previously lived in California.

8 (5) Attended a *public or private* secondary school, *as described*
9 *in Sections 52 and 53*, in the state for three or more years.

10 (6) ~~Is~~ *Upon enrollment, will be* in his or her first academic year
11 as a matriculated student in California public higher education, as
12 that term is defined in subdivision (a) of Section 66010, *will be*
13 *living in California, and will file an affidavit with the institution*
14 *stating that he or she intends to establish residency in California*
15 *as soon as possible.*

16 SEC. 4. The Legislature requests the Regents of the University
17 of California to enact regulations and procedures that exempt from
18 nonresident tuition students of that university who meet the
19 requirements applicable to students of the California Community
20 Colleges and the California State University, respectively, in
21 paragraph (4) of subdivision (a) of Section 76140, and subdivision
22 (c) of Section 89705, of the Education Code.

23 SEC. 5. If the Commission on State Mandates determines that
24 this act contains costs mandated by the state, reimbursement to
25 local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.